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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XC187

Takes of Marine Mammals Incidental to Specified Activities; Harbor Activities Related to the Delta IV/Evolved Expendable Launch Vehicle at Vandenberg Air Force Base, CA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to United Launch Alliance (ULA), to take marine mammals, by Level B harassment, incidental to conducting Delta Mariner activities related to the Delta IV/Evolved Expendable Launch Vehicle (Delta IV/EELV) at south Vandenberg Air Force Base, CA (VAFB).

DATES: Effective September 26, 2012, through September 25, 2013.

ADDRESSES: To obtain an electronic copy of the authorization, application, and associated Environmental Assessment (EA) and Finding of No Significant Impact (FONSI), write to the previously mentioned address, telephone the contact listed here (see FOR FURTHER INFORMATION CONTACT), or download the file at:

<http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>.

Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Jeannine Cody, NMFS, Office of Protected Resources, NMFS (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the MMPA (MMPA; 16 U.S.C. 1361 et seq.) directs the Secretary of Commerce to authorize, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if: (1) we make certain findings; (2) the taking is limited to harassment; and (3) we provide a notice of a proposed authorization to the public for review.

Authorization shall be granted for the incidental taking of small numbers of marine mammals if we, NMFS, find that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). The authorization must set forth the permissible methods of taking; other means of effecting the least practicable adverse impact on the species or stock and its habitat; and requirements pertaining to the mitigation, monitoring and reporting of such takings.

We have defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely

to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the Marine Mammal Protection Act established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) of the Act establishes a 45-day time limit for our review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the public comment period, we must either issue or deny the authorization and must publish a notice in the Federal Register within 30 days of our determination to issue or deny the authorization.

Except with respect to certain activities not applicable here, the Marine Mammal Protection Act defines "harassment" as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

We received an application on May 7, 2012, from United Launch Alliance requesting the taking, by Level B harassment only, of small numbers of marine mammals, incidental

to conducting Delta Mariner harbor operations for one year. We determined the application complete and adequate on June 5, 2012.

These activities (i.e., transport vessel operations, cargo movement activities, and harbor maintenance dredging) will support Delta IV/EELV launch activities from the Space Launch Complex at Vandenberg Air Force Base (Base) and would occur in the vicinity of a known pinniped haul out site (Small Haul-out Site #1 in the Application) located in a harbor on the southwest section of the Base.

Acoustic and visual stimuli generated by the use of heavy equipment during the Delta Mariner off-loading operations and the cargo movement activities, the increased presence of personnel, and harbor maintenance dredging may have the potential to cause California sea lions (Zalophus californianus), Pacific harbor seals (Phoca vitulina), and Northern elephant seals (Mirounga angustirostris) hauled out on Small Haul-out Site #1 to flush into VAFB Harbor or to cause a short-term behavioral disturbance for marine mammals in the area. These types of disturbances are the principal means of marine mammal taking associated with these activities, and ULA has requested an authorization to take 1,075 Pacific harbor seals; 86 California sea lions; and 43 Northern elephant seals by Level B harassment only.

We have outlined the purpose of the program in a previous notice for the proposed Authorization (77 FR 38587, June 28, 2012). ULA's proposed activities have not changed between the proposed IHA notice and this final notice announcing the issuance of the Authorization. For a more detailed description of the authorized action, including a discussion of associated noise sources from the harbor operations, refer to the notice of

the proposed IHA (77 FR 38587, June 28, 2012) and the application for a more detailed description of the authorized action.

This is ULA's tenth request for an Authorization and they have requested take of Pacific harbor seals; California sea lions; and Northern elephant seals by Level B harassment only. To date, we have issued nine, 1-year, Incidental Harassment Authorizations to them for the same activities from 2002 to 2011, with the last Authorization expiring on June 6, 2012 (76 FR 33721, June 9, 2011).

Description of the Specified Geographic Region

The activities will take place in or near the VAFB harbor located on the central coast of California at 34° 33' N, 120° 36' W in the northeast Pacific Ocean. The harbor is approximately 2.5 miles (mi) (4.02 kilometers (km)) south of Point Arguello, CA, and approximately 1 mi (1.61 km) south of the nearest marine mammal rookery.

Comments and Responses

We published a notice of receipt of the ULA application and proposed IHA in the Federal Register on June 28, 2012 (77 FR 38587). During the 30-day public comment period, we received one comment from the Marine Mammal Commission (Commission).

Comment 1: The Commission recommended that we issue the IHA, subject to inclusion of the proposed mitigation and monitoring measures.

Response: The issued IHA will include all of the mitigation and monitoring measures that we proposed in the notice of the proposed IHA (77 FR 38587, June 28, 2012).

Description of Marine Mammals in the Area of the Specified Activity

The marine mammal species most likely to be harassed incidental to conducting Delta Mariner activities at the Base are the California sea lion, the Pacific harbor seal, and the northern elephant seal. California sea lions, Pacific harbor seals, and northern elephant seals are not listed as threatened or endangered under the U.S. Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 et seq.), nor are they categorized as depleted under the MMPA.

Other cetaceans that have the potential to transit in the vicinity of the Base's harbor include the short-beaked common dolphin (Delphinus delphis), the Pacific white-sided dolphin (Lagenorhynchus obliquidens), and the gray whale (Eschrichtius robustus). However, these species are rare in the immediate harbor area. We included a more detailed discussion of the status of these stocks and their occurrence at the Base in the notice of the proposed IHA (77 FR 38587, June 28, 2012).

Potential Effects on Marine Mammals

Acoustic and visual stimuli generated by: the use of heavy equipment during the Delta Mariner off-loading operations and harbor dredging and the increased presence of personnel may have the potential to cause Level B harassment of any pinnipeds hauled out in the VAFB harbor. This disturbance from acoustic and visual stimuli is the principal means of marine mammal taking associated with these activities.

The effects of the harbor activities would be limited to short-term startle responses and localized behavioral changes and have the potential to temporarily displace the animals from a haul out site. We would expect the pinnipeds to return to a haulout site within 60 minutes of the disturbance (Allen et al., 1985) and do not expect that the

pinnipeds would permanently abandon a haul-out site during the conduct of harbor maintenance and Delta Mariner operations.

None of ULA's operations would occur on pinniped rookeries; therefore, we do not expect mother and pup separation or crushing of pups to occur. For a more detailed discussion of the sound levels produced by the equipment, behavioral reactions of marine mammals to loud noises or looming visual stimuli, and some specific observations of the response of marine mammals to this activity gathered during previous monitoring, we refer the reader to the notice of the proposed IHA (77 FR 38587, June 28, 2012), the application, and associated documents.

Anticipated Effects on Habitat

We do not anticipate that the proposed operations would result in any temporary or permanent effects on the habitats used by the marine mammals in the proposed area, including the food sources they use (i.e. fish and invertebrates). We do not anticipate that there would be any physical damage to any habitat. While we anticipate that the specified activity may result in marine mammals avoiding certain areas due to temporary ensonification and human presence, this impact to habitat is temporary and reversible which we considered in detail in the notice of the proposed IHA (77 FR 38587, June 28, 2012), as behavioral modification.

Mitigation

In order to issue an incidental take authorization under section 101(a)(5)(D) of the Marine Mammal Protection Act, we must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse

impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and the availability of such species or stock for taking for certain subsistence uses.

ULA has based the mitigation measures described herein, to be implemented for harbor operations, on the following:

- (1) Protocols used during previous operations as required by us; and
- (2) Previous Authorization applications and Authorizations issued by us.

To reduce the potential for disturbance from visual and acoustic stimuli associated with the activities, ULA/and or its designees shall implement the following mitigating measures for marine mammals:

- (1) If activities occur during nighttime hours, United Launch Alliance will turn on lighting equipment before dusk. The lights would remain on for the entire night to avoid startling pinnipeds.
- (2) Initiate operations before dusk.
- (3) Keep construction noises at a constant level (i.e., not interrupted by periods of quiet in excess of 30 minutes) while pinnipeds are present.
- (4) If activities cease for longer than 30 minutes and pinnipeds are in the area, United Launch Alliance would initiate a gradual start-up of activities to ensure a gradual increase in noise levels.
- (5) A qualified marine mammal observer would visually monitor the harbor seals on the beach adjacent to the harbor and on rocks for any flushing or other behaviors as a result of United Launch Alliance's activities (see Proposed Monitoring).

(6) The Delta Mariner and accompanying vessels would enter the harbor only when the tide is too high for harbor seals to haul-out on the rocks; reducing speed to 1.5 to 2 knots (1.5-2.0 nm/hr; 2.8-3.7 km/hr) once the vessel is within 3 mi (4.83 km) of the harbor. The vessel would enter the harbor stern first, approaching the wharf and moorings at less than 0.75 knot (1.4 km/hr).

(7) As United Launch Alliance explores alternate dredge methods, the dredge contractor may introduce quieter techniques and equipment.

We have carefully evaluated the applicant's proposed mitigation measures and have considered a range of other measures in the context of ensuring that we prescribe the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

(1) the manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;

(2) the proven or likely efficacy of the specific measure to minimize impacts as planned; and

(3) the practicability of the measure for applicant implementation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by us or recommended by the public, we have determined that the mitigation measures provide the means of effecting the least practicable adverse impacts on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth “requirements pertaining to the monitoring and reporting of such taking”. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area.

ULA will sponsor a marine mammal monitor during the present project, in order to implement the mitigation measures thus satisfying the monitoring requirements of the IHA. ULA’s monitoring activities will consist of:

- (1) Designating a qualified and biologically trained observer monitoring the area for pinnipeds during all harbor activities. During nighttime activities, the monitor would use a night vision scope.
- (2) Conducting baseline observation of pinnipeds in the project area prior to initiating project activities.
- (3) Conducting and recording observations on pinnipeds in the vicinity of the harbor for the duration of the activity occurring when tides are low enough (less than or equal to 2 ft (0.61 m) for pinnipeds to haul out.
- (4) Conducting post-construction observations of pinniped haul-outs in the project area to determine whether animals disturbed by the project activities return to the haul-out.

Reporting

United Launch Alliance will notify us two weeks prior to initiation of each activity. After the completion of each activity, they will submit a draft final monitoring report to us within 120 days to the Director of the Office of Protected Resources at our headquarters. If United Launch Alliance receives no comments from us on the draft Final Monitoring Report, we would consider the draft Final Monitoring Report to be the Final Monitoring Report.

The final report would provide dates, times, durations, and locations of specific activities, details of pinniped behavioral observations, and estimates of numbers of affected pinnipeds and impacts (behavioral or other). In addition, the report would include information on the weather, tidal state, horizontal visibility, and composition (species, gender, and age class) and locations of haul-out group(s).

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the authorization (if issued), such as an injury (Level A harassment), serious injury or mortality (e.g., ship-strike, gear interaction, and/or entanglement), United Launch Alliance shall immediately cease the specified activities and immediately report the incident to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301-427-8401 and/or by email to Jolie.Harrison@noaa.gov and ITP.Cody@noaa.gov and to the Southwest Regional Stranding Coordinator at (562) 980-3230 (Sarah.Wilkin@noaa.gov).

The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;

- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

United Launch Alliance shall not resume its activities until we are able to review the circumstances of the prohibited take. We shall work with them to determine what is necessary to minimize the likelihood of further prohibited take and ensure Marine Mammal Protection Act compliance. They may not resume their activities until notified by us via letter, email, or telephone.

In the event that United Launch Alliance discovers an injured or dead marine mammal, and the observer determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as we describe in the next paragraph), the United Launch Alliance will immediately report

the incident to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, at 301-427-8401 and/or by email to Jolie.Harrison@noaa.gov and ITP.Cody@noaa.gov and to the Southwest Regional Stranding Coordinator at (562) 980–3230 (Sarah.Wilkin@noaa.gov). The report must include the same information identified in the paragraph above this section. Activities may continue while we review the circumstances of the incident. We will work with the United Launch Alliance to determine whether modifications in the activities are appropriate.

In the event that United Launch Alliance discovers an injured or dead marine mammal, and the observer determines that the injury or death is not associated with or related to the authorized activities (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), United Launch Alliance will report the incident to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, at 301-427-8401 and/or by email to Jolie.Harrison@noaa.gov and ITP.Cody@noaa.gov and the Southwest Regional Stranding Coordinator at (562) 980–3230 (Sarah.Wilkin@noaa.gov), within 24 hours of the discovery. United Launch Alliance will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to us.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the Marine Mammal Protection Act defines "harassment" as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild

[Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

We anticipate take by Level B harassment only as a result of the harbor maintenance and Delta Mariner operations in the VAFB harbor. Based on previous monitoring reports, with the same activities conducted in the proposed operations area, we estimate that approximately 1,161 Pacific harbor seals; 86 California sea lions; and 43 northern elephant seals could be potentially affected by Level B behavioral harassment over the course of the period of effectiveness of the proposed Authorization. We base these estimates on historical pinniped survey counts from 2001 to 2011 and calculated takes by multiplying the average of the maximum abundance by 43 days (i.e., the total number of operational days). Thus, United Launch Alliance requests an Authorization to incidentally harass approximately 1,161 Pacific harbor seals (27 animals times 43 days), 86 California sea lions (2 animals times 43 days), and 43 northern elephant seals (1 animal times 43 days).

For this IHA, NMFS has authorized the take of 1,161 Pacific harbor seals, 86 California sea lions, and 43 northern elephant seals. Because of the required mitigation measures and the likelihood that some pinnipeds will avoid the area due to wave inundation of the haulout area, we expects no injury, serious injury, or mortality to occur, and no takes by injury or mortality are authorized.

Negligible Impact and Small Numbers Analysis and Determination

We have defined “negligible impact” in 50 CFR 216.103 as “...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.” In making a negligible impact determination, we consider:

- (1) The number of anticipated injuries, serious injuries, or mortalities;
- (2) The number, nature, and intensity, and duration of Level B harassment (all relatively limited); and
- (3) The context in which the takes occur (i.e., impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data);
- (4) The status of stock or species of marine mammals (i.e., depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);
- (5) Impacts on habitat affecting rates of recruitment/survival; and
- (6) The effectiveness of monitoring and mitigation measures.

As mentioned previously, we estimate that three species of marine mammals could be potentially affected by Level B harassment over the course of the Authorization. For each species, these numbers are small relative to the population size. These incidental harassment numbers represent 0.03 percent of the U.S. stock of California sea lion, 3.8 percent of the California stock of Pacific harbor seal, and 0.03 percent of the California breeding stock of northern elephant seal.

For reasons stated previously in this document , United Launch Alliance's specified activities are not likely to cause long-term behavioral disturbance, abandonment of the haulout area, serious injury, or mortality because:

(1) The effects of the harbor activities are expected to be limited to short-term startle responses and localized behavioral changes. Minor and brief responses, such as short-duration startle or alert reactions, are not likely to constitute disruption of behavioral patterns, such as migration, nursing, breeding, feeding, or sheltering.

(2) The likelihood that marine mammal detection by trained, visual observers is high at close proximity the harbor;

(3) Delta Mariner off-loading operations and associated cargo movements within the harbor would occur at a maximum frequency of four times per year and the vessel's arrival and departure would occur during daylight hours at high tide when the haulout areas are fully submerged and few, if any, pinnipeds are present in the harbor;

(4) The relatively slow operational speed of the Delta Mariner (1.5 to 2 kts; 1.72 mph) during its approach to the harbor at high tide and the vessel's slow operational speed (0.75 kts; 0.86 mph) during its approach to the wharf;

(5) There is no potential for large-scale movements leading to serious injury or mortality near the south Base harbor because, historically, the number of harbor seals hauled out near the site is less than 30 individuals;

(6) The specified activities do not occur near rookeries;

(7) The availability of alternate areas near the harbor for pinnipeds to avoid the resultant noise from the maintenance and vessel operations. Results from previous

monitoring reports that support our conclusions that the pinnipeds returned to the haul-out site during periods of low tide after the disturbance and do not permanently abandon a haul-out site during the conduct of harbor maintenance and Delta Mariner operations.

We do not anticipate that any injuries, serious injuries, or mortalities would occur as a result of ULA's proposed activities, and we do not propose to authorize injury, serious injury or mortality. These species may exhibit behavioral modifications, including temporarily vacating the area during the proposed harbor maintenance and Delta Mariner operations to avoid the resultant acoustic and visual disturbances. Due to the nature, degree, and context of the behavioral harassment anticipated, the activities are not expected to impact rates of recruitment or survival. Further, these proposed activities would not take place in areas of significance for marine mammal feeding, resting, breeding, or calving and would not adversely impact marine mammal habitat.

We have determined, provided that ULA carries out the previously described mitigation and monitoring measures, that the impact of conducting harbor activities related to the Delta IV/Evolved Expendable Launch Vehicle at Vandenberg Air Force Base, CA, September 2012, through September 2013, may result, at worst, in a temporary modification in behavior and/or low-level physiological effects (Level B harassment) of small numbers of certain species of marine mammals.

Based on the analysis contained here of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, have determined that the total taking from the proposed activities will have a negligible impact on the affected species or stocks; and

that impacts to affected species or stocks of marine mammals would be mitigated to the lowest level practicable.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses
Section 101(a)(5)(D) of the Marine Mammal Protection Act also requires us to determine that the authorization will not have an unmitigable adverse effect on the availability of marine mammal species or stocks for subsistence use. There are no relevant subsistence uses of marine mammals in the study area (northeastern Pacific Ocean) that implicate section 101(a)(5)(D) of the Marine Mammal Protection Act.

Endangered Species Act (ESA)

This action will not affect species listed under the Endangered Species Act that are under our jurisdiction. The U.S. Fish and Wildlife Service issued a Biological Opinion in August 2001, which concluded that the program was not likely to jeopardize the continued existence of the southern sea otter. The activities covered by our Incidental Harassment Authorization are analyzed in that Biological Opinion, and this Authorization does not modify the action in a manner not previously analyzed.

National Environmental Policy Act (NEPA)

In 2001, the U.S. Air Force (Air Force) prepared an Environmental Assessment for Harbor Activities Associated with the Delta IV Program at Vandenberg Air Force Base. In 2005, we prepared an Environmental Assessment augmenting the information contained in the Air Force's EA and issued a Finding of No Significant Impact on the issuance of an Incidental Harassment Authorization for United Launch Alliance's harbor activities in accordance with section 6.01 of the NOAA Administrative Order 216-6

(Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999). United Launch Alliance's proposed activities and impacts for 2012-2013 are within the scope of our 2005 Environmental Assessment and Finding of No Significant Impact. We have again reviewed the 2005 Environmental Assessment and determined that there are no new direct, indirect or cumulative impacts to the human and natural environment associated with the Incidental Harassment Authorization requiring evaluation in a supplemental Environmental Assessment and we, therefore, we reaffirm the 2005 Finding of No Significant Impact.

Authorization

As a result of these determinations, NMFS has issued an IHA to ULA to take marine mammals, by Level B harassment only, incidental to conducting Delta Mariner operations, cargo unloading activities, and harbor maintenance activities at south VAFB, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: September 26, 2012

Helen M. Golde,
Acting Office Director, Office of Protected Resources,
National Marine Fisheries Service.

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